

GIPSON HOFFMAN & PANCIONE  
A PROFESSIONAL CORPORATION

GIPSON HOFFMAN & PANCIONE  
A Professional Corporation  
GREGORY A. FAYER (State Bar No. 232303)  
GFayer@ghplaw.com  
ELLIOT B. GIPSON (State Bar No. 234020)  
EGipson@ghplaw.com  
1901 Avenue of the Stars, Suite 1100  
Los Angeles, California 90067-6002  
Telephone: (310) 556-4660  
Facsimile: (310) 556-8945

Attorneys for Plaintiff  
CYBERSitter, LLC d/b/a Solid Oak Software

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

CYBERSitter, LLC, a California limited liability company, d/b/a Solid Oak Software,

Plaintiff,

v.

The People's Republic of China, a foreign state; Zhengzhou Jinhui Computer System Engineering Ltd., a Chinese corporation; Beijing Dazheng Human Language Technology Academy Ltd., a Chinese corporation; Sony Corporation, a Japanese corporation; Lenovo Group Limited, a Chinese corporation; Toshiba Corporation, a Japanese corporation; ACER Incorporated, a Taiwanese corporation; ASUSTeK Computer Inc., a Taiwanese corporation; BenQ Corporation, a Taiwanese corporation; Haier Group Corporation, a Chinese corporation; DOES 1-10, inclusive,

Defendants.

CASE NO. CV 10-00038 JST (SHx)

**DECLARATION OF ELLIOT B. GIPSON IN SUPPORT OF PLAINTIFF'S RENEWED MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT LENOVO GROUP LIMITED**

Judge: Hon. Josephine Staton Tucker  
Crm: 10A

Hearing Date: June 13, 2011  
Hearing Time: 10:00 a.m.

Discovery Cutoff: Dec. 2, 2011  
Pretrial Conference: Feb. 27, 2012  
Trial Date: March 27, 2012

DECLARATION OF ELLIOT B. GIPSON

1                                    **DECLARATION OF ELLIOT B. GIPSON**

2  
3            I, Elliot B. Gipson, declare as follows:

4            1.        I am a member in good standing of the bar of the State of California and I  
5 have been admitted to practice in this Court. I am an attorney at the law firm of  
6 Gipson Hoffman & Pancione, counsel of record for plaintiff CYBERSitter, LLC d/b/a  
7 Solid Oak Software ("CYBERSitter" or "Plaintiff"). Except as otherwise stated, I have  
8 personal knowledge of the facts set forth herein, and, if called upon as a witness, I  
9 could and would competently testify thereto.  
10

11                                   **Lenovo's Knowledge of the Suit Prior to Filing**

12            2.        On information and belief, on June 15, 2009, Plaintiff sent a cease and  
13 desist letter to Lenovo Group Limited ("Lenovo"), informing it of unauthorized  
14 copying and incorporation of Plaintiff's software program into Green Dam Youth  
15 Escort. On information and belief, Plaintiff never received a response to this initial  
16 cease and desist letter from Lenovo.

17            3.        On August 12, 2009, Plaintiff sent Defendant Lenovo a detailed 15-page  
18 cease and desist letter, setting forth in detail the factual and legal bases of Plaintiff's  
19 claims. A true and correct copy of this cease and desist letter is attached as Exhibit K  
20 to the Declaration of Elliot B. Gipson filed in Support of Plaintiff's Motion for Entry  
21 of Default Against the Chinese Defendants ("First Gipson Decl."). Court Docket No.  
22 37 (attachment no. 11).

23            4.        Lenovo (and its legal representatives) had extensive communications  
24 with Plaintiff regarding Plaintiff's claims in response to Plaintiff's cease and desist  
25 letters and draft complaint in the fall of 2009 prior to the initial filing of this action.  
26 *Also, see generally* Declaration of Gregory A. Fayer in support of Plaintiff's Motion  
27 for Entry of Default Against Chinese Defendants ("Fayer Decl.") at paragraphs 2-6  
28 (Court Docket No. 43).

5. Lenovo responded to Plaintiff's August 12 cease and desist letter on August 18, 2009 by letter from Lenovo's in-house counsel and Vice President of Lenovo's IP division in the U.S., Ephraim Starr. Attached as Exhibit A, is a true and correct copy of Mr. Starr's letter.

6. Following an email exchange between Plaintiff's counsel and Mr. Starr, Plaintiff sent Mr. Starr a privileged settlement letter on September 25, 2009. Over the next couple of months, Plaintiff's counsel engaged in extensive communications with both Mr. Starr and Lenovo's special purpose outside counsel in Los Angeles, Tim Glassett, regarding the nature of Plaintiff's claims against Lenovo and potential resolutions. These communications included an in-person meeting with Mr. Glassett at the offices of Plaintiff's counsel.

7. On September 25, 2009, Plaintiff sent Lenovo a draft of its Complaint.

**Plaintiff's First Attempt to Serve Lenovo  
through the Hague Service Convention**

8. On or about January 22, 2010, I sent the Ministry of Justice of the PRC, Department of Judicial Assistance and Foreign Affairs, Division of Judicial Assistance, packets of documents to serve on Lenovo pursuant to Article 5, subsection (a) of the Hague Convention.

9. On or about July 12, 2010, the PRC sent back a blank certificate of service for Lenovo. In its cover letter, the PRC stated that it would not serve Lenovo because the wording "Republic of China" (referring to Taiwan) was "unacceptable." The PRC letter also suggested that Plaintiff serve Lenovo through the Hong Kong Central Authority and stated that the PRC enjoyed "absolute sovereign immunity." A true and correct copy of this PRC cover letter is attached as Exhibit D to the First Gipson Decl., Court Docket No. 37 (attachment No. 4).

10. On July 28, 2010, the Court issued an Order to Show Cause Re: Dismissal for Lack of Prosecution (the "OSC"). Court Docket No. 25. The OSC

1 invited Plaintiff to request an Entry of Default pursuant to Fed. R. Civ. P. 55(a) within  
2 twenty (20) days in order to prevent the dismissal of the action as to the unserved  
3 defendants. *Id.* At that time, only Defendants ACER, ASUSTeK, and BenQ had  
4 answered the Complaint. Sony and Toshiba had been served, but had not yet  
5 answered. The PRC had failed to effect service on Lenovo, Haier Group Corporation  
6 ("Haier"), Zhengzhou Jinhui Computer System Engineering Ltd. ("Jinhui"), and  
7 Beijing Dazheng Human Language Technology Academy Ltd. (collectively, the  
8 "Chinese Defendants").

9 11. On August 10, 2010, Plaintiff requested that Defendant Lenovo  
10 voluntarily accept service and gave notice to Defendant Lenovo of Plaintiff's Motion  
11 for Entry of Default Against Chinese Defendants. Plaintiff enclosed a copy of the  
12 Complaint, Summons, Order of the Chief Judge Transferring the Case, and attendant  
13 simplified Chinese translations of the same along with the cover letter. A true and  
14 correct copy of this cover letter is attached as Exhibit B (without enclosures). On  
15 August 16, 2010, I sent copies of the same letter and enclosures to Defendant Lenovo  
16 via U.S. mail.

17 12. Defendant Lenovo declined to voluntarily accept service of the  
18 Complaint.

19 13. In response to the Court's OSC, Plaintiff filed its Motion for Entry of  
20 Default Against Chinese Defendants on August 17, 2010. The Court denied Plaintiff's  
21 Motion, but granted Plaintiff's alternative request to amend its Complaint to delete  
22 reference to a term the PRC found offensive (referring to Taiwan as the Republic of  
23 China) in order to give Plaintiff an opportunity to make a renewed attempt to serve the  
24 Chinese Defendants as pursuant to the Hague Convention. The Court also instructed  
25 Plaintiff to attempt to serve Lenovo through the Hong Kong Central Authority.

26 14. On August 19, 2010 (two days after Plaintiff's motion was filed),  
27 Lenovo's counsel contacted Plaintiff's counsel and sent a letter to Plaintiff offering to  
28 waive service if Plaintiff would agree to withdraw its motion for default as it pertained

1 to Lenovo. Attached as Exhibit C, is a true and correct copy of Lenovo's counsel's  
 2 letter. Plaintiff agreed and Lenovo's counsel agreed to draft a stipulation. However,  
 3 on the morning of August 23, Lenovo's counsel contacted Plaintiff's counsel and  
 4 withdrew the offer, citing a miscommunication with 'the powers that be.'

5  
 6 **Plaintiff's Second Attempt to Serve Lenovo**  
 7 **through the Hague Service Convention**

8 15. On or about October 18, 2010, I sent the Government Secretariat of Hong  
 9 Kong (the "Hong Kong Central Authority"), a packet of documents to serve on  
 10 Lenovo Group Limited ("Lenovo") pursuant to Article 5, subsection (a) of the Hague  
 11 Convention. These documents included an original and one copy of the Request for  
 12 Service Abroad of Judicial or Extrajudicial Documents, two copies of the Summons,  
 13 two copies of the First Amended Complaint, and an original and one copy of Chinese  
 14 translations of the Summons and First Amended Complaint (together, the "FAC  
 15 Service Documents"). A true and correct copy of the documents I requested be served  
 16 on Lenovo is attached as Exhibit D.

17 16. On or about February 9, 2011, the Hong Kong Central Authority sent the  
 18 FAC Service Documents back to me, including a blank service certificate. The cover  
 19 letter contained a two sentence explanation for the Hong Kong Central Authority's  
 20 actions signed by Calvin Chan, for the Chief Secretary for Administration. On  
 21 information and belief, this letter was also sent to the U.S. District Court for the  
 22 Central District of California – Southern Division. The Hong Kong Central  
 23 Authority's entire response was as follows:

24 I refer to your recent request for service of judicial  
 25 documents on Lenovo Group Limited and regret to inform  
 26 you that we would not execute your request under Article 13  
 27 of the Hague Service Convention 1965 which provides that a  
 28 State may refuse to comply with a request for service if it

1           deems that compliance would infringe its national  
2           sovereignty or security. The documents are returned  
3           herewith for your disposal.

4   Attached as Exhibit E, is a true and correct copy of Mr. Chan's February 9, 2011 letter  
5   (without enclosures).

6           17. On or about February 18, 2011, in response to the Hong Kong Central  
7   Authority's refusal to serve Lenovo, I emailed Mr. Chan explaining that the Hong  
8   Kong Central Authority sent back a blank certificate in violation of Article 6 of the  
9   Hague Convention. I further requested that the Hong Kong Central Authority state its  
10   reasons for refusing to effectuate service in a completed certificate of service.  
11   Attached as Exhibit F, is a true and correct copy of my February 18, 2011 email to Mr.  
12   Chan (without enclosures).

13           18. Mr. Chan did not respond to my February 18, 2011 email at that time.

14           19. On or about March 7, 2011, I sent Mr. Chan of the Hong Kong Central  
15   Authority a follow-up letter which requested that Hong Kong either serve the  
16   documents on Lenovo or return a completed certificate of service explaining why  
17   service was not effected. In addition to the cover letter, I enclosed a copy of his  
18   February 9, 2011 letter and the FAC Service Documents. Attached as Exhibit G, is a  
19   true and correct copy of my March 7, 2011 letter to Mr. Chan (without enclosures).

20           20. On or about March 25, 2011, Mr. Chan of the Hong Kong Central  
21   Authority sent me a response. On information and belief, this letter was also sent to  
22   the U.S. District Court for the Central District of California – Southern Division. The  
23   substance of Hong Kong Central Authority's response was as follows:

24           Your request for service of judicial documents was declined under Article 13 of  
25   the Convention. A formal reply containing the essential elements of the model  
26   certificate annexed to the Convention has been provided to you in our letter  
27   dated 9 February 2011. The reasons for our refusal have also been clearly set  
28   out therein.

1 Once again, the Hong Kong Central Authority returned the FAC Service Documents.  
 2 Attached as Exhibit H, is a true and correct copy of Mr. Chan's March 25, 2011 letter  
 3 (without enclosures).

4 21. Plaintiff has not received any further correspondence from the Hong  
 5 Kong Central Authority.

6  
 7 **Plaintiff's Effective Service On The Other Chinese Defendants**

8 22. On information and belief, the other Chinese Defendants were served by  
 9 the PRC on or about April 18, 2011. Subsequently, Plaintiff and the Chinese  
 10 Defendants, except for Lenovo, stipulated to a June 8, 2011 date by which they would  
 11 respond to the FAC. Other than the PRC, Lenovo is the lone defendant to refuse to  
 12 stipulate to entrance into this action and to a response date.

13  
 14 **Plaintiff's April 2011 Request that Lenovo Accept Voluntary Service of FAC**

15 23. On April 26, 2011, Plaintiff requested that Defendant Lenovo voluntarily  
 16 accept service and gave notice to Defendant Lenovo of Plaintiff's Motion for Entry of  
 17 Default. Plaintiff corresponded with Defendant Lenovo through attorney Bethany L.  
 18 Hengsbach of Sheppard, Mullin, Richter & Hampton LLP, Defendant Lenovo's U.S.  
 19 counsel. Plaintiff enclosed a copy of the FAC and Summons along with the cover  
 20 letter. Attached as Exhibit I, is a true and correct copy of this cover letter (without  
 21 enclosures). On April 26, 2011, I sent copies of the same letter and enclosures to

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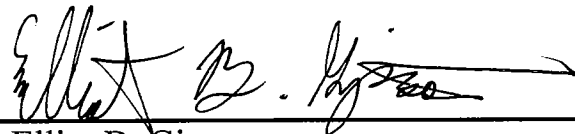
1 Defendant Lenovo through its attorney via email and U.S. mail. Subsequently, Ms.  
2 Hengsbach informed me that Lenovo would not voluntarily appear in the case.

3 20. On Friday, May 6, 2011, I spoke with Ms. Hengsbach via the telephone.  
4 Again, I requested that Lenovo appear voluntarily. I informed her that although it  
5 appeared that the PRC had served the Chinese defendants on or about April 18, 2011,  
6 the Hong Kong Central Authority had refused to effectuate service based on the  
7 grounds of that service purportedly infringed upon its national sovereignty or security.  
8 Ms. Hengsbach requested that I email her the Hong Kong Central Authority's  
9 response. After the telephone call, I sent Ms. Hengsbach a follow-up email which  
10 included the first response from the Hong Kong Central Authority. In that email, I  
11 requested that she reconsider her client's position and voluntarily accept service.  
12 Attached as Ex. J, is a true and correct copy of my May 6, 2011 email to Ms.  
13 Hengsbach (without enclosure).

14 21. On Tuesday, May 10, 2011, Ms. Hengsbach informed me that Lenovo  
15 would not be voluntarily accepting service. Attached as Ex. K, is a true and correct  
16 copy of Ms. Hengsbach's May 10, 2011 email to me.

17 22. Plaintiff has not received any further correspondence from Lenovo or its  
18 counsel.

19 I declare under penalty of perjury under the laws of the United States of  
20 America and the State of California that the foregoing is true and correct. Executed  
21 on May 16, 2011, at Los Angeles, California.

22  
23 

24 Elliot B. Gipson